

DECISION

28414

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-215101

DATE: May 30, 1984

MATTER OF: Fancy Industries, Inc.

DIGEST:

Apparent protest of agency determination that small business bidder is nonresponsible is dismissed since by law the Small Business Administration, to which the matter has been referred, conclusively determines the responsibility of small business bidders.

Fancy Industries, Inc. (Fancy), protests an award to any bidder other than Fancy under invitation for bids (IFB) DLA100-84-B-0535, for flyer's helmets, issued by the Defense Logistics Agency (DLA).

We have been advised informally by DLA that it determined that Fancy was not a responsible prospective contractor. DLA further advised that since the protester is a small business, DLA forwarded the negative responsibility determination to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC).

Under the law, it is the SBA, under the COC program, that conclusively determines whether a small business is responsible to perform a particular contract. 15 U.S.C. § 637(b)(7) (1982). Consequently, the protest does not raise an issue which this Office considers. Gilbralter Industries, Inc., B-208130, August 3, 1982, 82-2 CPD 105. Moreover, the SBA determination generally is not reviewable in the absence of a showing of possible fraud or bad faith on the part of government officials or that material information was not considered by SBA. See Five Starr Fabricators, Inc., B-214594, March 20, 1984, 84-1 CPD 340.

We dismiss the protest.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel

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